

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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MAILED

AUG 22 2002

Ex parte ROBERT A. HARD

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PAT & TM OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Appeal No. 2000-1019  
Application No. 08/623,852

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ON BRIEF

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Before GARRIS, TIMM and DELMENDO, Administrative Patent Judges.  
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1 through 17, which are all of the claims pending in the application.

The subject matter on appeal relates to a process for recovering metal values from a metal containing material including metal values being recovered and one or more additional metal

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values.<sup>1</sup> The appealed subject matter is illustrated by representative independent claim 1, which is the broadest independent claim.

1. A process for recovering metal values from a metal containing material including metal values being recovered and one or more additional metal values comprising:

digesting the metal containing material in a sulfuric acid solution comprising:

sulfuric acid;  
a reducing agent to render a metal value insoluble; and  
a carbon source;

for a period of time sufficient to solubilize the metal values being recovered and render the one or more additional metal values insoluble;

heating the digestion mixture for a period of time sufficient to attain 75-95°C; and

separating the resulting solution from the remaining solids.

The references relied upon by the examiner as evidence of obviousness are:

Pazdej	4,332,777	Jun. 1, 1982
Bender	5,232,490	Aug. 3, 1993

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<sup>1</sup>We note that the term "chlorides" on page 1, line 18 of the subject specification, appears to be in error. The proper term seems to be "fluorides." This is deserving of correction should further prosecution be pursued.

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Claims 1 through 17 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellants regard as the invention.

Claims 1 through 13 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the now claimed invention.

Claims 1 through 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bender in view of Pazdej.

#### GROUPING OF CLAIMS

The appellants submit that "[c]laims 1-13 stand together with respect to the §103(a) rejection under Bender taken with Pazdej, and with respect to the rejections under 35 U.S.C. § 112, first and second paragraphs. Claims 14-17 stand together with respect to the rejection under 35 U.S.C. § 112, second paragraph" (Brief, Paper No. 16, page 6). Thus, "the rejection of claims 1-13 stand or fall together because appellant's [sic, appellants'] brief does not include a statement that this grouping of claims does not stand or

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fall together and reasons in support thereof" (Answer, Paper No. 19, page 2). Claims 14 through 17 also stand or fall together for the same reason (id).

For this reason, we limit our discussion to independent claim 1 in addressing the rejections under 35 U.S.C. § 112, first paragraph, and 35 U.S.C. § 103(a). Accordingly, claims 2 through 13 stand or fall together with independent claim 1 on the respective issues of new matter and obviousness. In addressing the rejection under 35 U.S.C. § 112, second paragraph, we will limit our discussion to independent claims 1 and 14. Accordingly, claims 2 through 13 stand or fall together with independent claim 1, while claims 15 through 17 stand or fall with independent claim 14, on this issue of indefiniteness.

#### OPINION

For the reasons set forth below, we affirm each of the rejections before us on appeal.

#### REJECTION OF CLAIMS 1 THROUGH 17 UNDER 35 U.S.C. §112, 2nd PARAGRAPH

One of the purposes of 35 U.S.C. § 112, second paragraph, "is to provide those who would endeavor, in future enterprise, to approach the area circumscribed by the claims of a patent, with

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adequate notice demanded by due process of law, so that they may more readily and accurately determine the boundaries of protection involved and evaluate the possibility of infringement and dominance." In re Hammack, 427 F.2d 1378, 1382, 166 USPQ 204, 208 (CCPA 1970). As set forth in Amgen Inc. v. Chugai Pharmaceutical Co., Ltd., 927 F.2d 1200, 1217, 18 USPQ2d 1016, 1030 (Fed. Cir. 1991):

The statute requires that "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." A decision as to whether a claim is invalid under this provision requires a determination whether those skilled in the art would understand what is claimed. See Shatterproof Glass Corp. v. Libbey-Owens Ford Co., 758 F.2d 613, 624, 225 USPQ 634, 641 (Fed. Cir. 1985) (Claims must "reasonably apprise those skilled in the art" as to their scope and be "as precise as the subject matter permits.").

The claim language must define the scope of the claimed subject matter with a reasonable degree of precision and particularity. Furthermore, claim language must be analyzed "not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary skill in the pertinent art." In re Moore, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971).

The examiner rejected claim 1 as indefinite, because the language "'being recovered and one or more additional metal values' is awkward and confusing as to exactly what is being claimed" (Answer, Paper No. 19, page 4). The examiner also takes the position that the language "'to render a metal value insoluble' is indefinite as to which metal value is referred to" and "indefinite as to what it is rendered insoluble in" (id).

The examiner rejected claim 14 as indefinite, because the language "'the digestion mixture' lacks proper antecedent basis in the claim" (id).<sup>2</sup>

In response to the examiner's rejection of claim 1 based on the language "being recovered and one or more additional metal values," the appellants maintain the position that

the original language of claim 1, as noted above, was not indefinite because "metal values being recovered" and "one or more additional metal values" are definite phrases which clearly recited the claimed invention, in view of the language of claim 1 as pending and Appellant's [sic, Appellants'] specification. . . . [T]he rejection of claim 1 on this basis was in error . . . (Brief, Paper No. 16, page 9).

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<sup>2</sup>Regarding claim 14, the examiner suggested inserting "--a digesting mixture comprising-- between 'form an' in line 9" (Answer, Paper No. 19, page 4). The examiner also suggested inserting "--a temperature of-- after 'attain'" in line 11 (id).

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In response to the examiner's rejection of claim 1 based on the language "to render a metal value insoluble," the appellants state that

In the accompanying amendment sought, Appellant [sic, Appellants] has clarified this phrase by substituting the phrase "to render the one of more additional metal values insoluble in the digestion mixture." Appellant [sic, Appellants] asserts that the clarifying language is not indefinite, and request that the amendment be entered and the rejection withdrawn (Brief, Paper No. page 9).

We note that the "accompanying amendment" filed by the appellants on May 20, 1999 was not entered by the examiner (Answer, Paper No. 19, page 2). We also note that the appellants did not present additional arguments in response to this particular aspect of the rejection.

In response to the examiner's rejection of claim 14 based on the language "the digestion mixture," the appellants state that

In the accompanying amendment sought, Appellant [sic, Appellants] has incorporated the changes suggested by the Examiner. Accordingly, Appellant [sic, Appellants] requests that the amendment be entered and the rejection withdrawn (Brief, Paper No. 16, page 9).

Again, we note that the "accompanying amendment" filed by the appellants on May 20, 1999 was not entered by the examiner (Answer, Paper No. 19, page 2). We also note that the appellants

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did not present additional arguments in response to this particular aspect of the rejection.

After careful review of the examiner's and the appellants' arguments, we will sustain the examiner's rejection. The definiteness of the claim 1 language "to render a metal value insoluble" and the claim 14 language "the digestion mixture" have not been argued by the appellants. For this reason, the rejection of claims 1 and 14 may be properly sustained on this ground alone. Therefore, we summarily affirm the rejection of independent claims 1 and 14 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph, and correspondingly, of dependent claims 2 through 13 and 15 through 17, respectively.

REJECTION OF CLAIMS 1 THROUGH 13  
UNDER 35 U.S.C. § 112, 1st PARAGRAPH

The adequate written description requirement of 35 U.S.C. § 112, 1<sup>st</sup> paragraph, provides that

the specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.



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"The function of the [written] description requirement is to ensure that the inventor had possession, as of the filing date of the application relied on, of the specific subject matter later claimed by him; how the specification accomplishes this is not material." In re Wertheim, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976).

To satisfy the written description requirement, the disclosure of the application as originally filed must reasonably convey to the artisan that the inventor had possession at that time of the later claimed subject matter. In re Kaslow, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983). It is not necessary that the application describe the claim limitations exactly, but only so clearly that persons of ordinary skill in the art will recognize from the disclosure that applicants invented the claimed subject matter. In re Wertheim, 541 F.2d at 262, 191 USPQ at 96.

"[P]recisely how close the original description must come to comply with the written description requirement of § 112 must be determined on a case-by-case basis." Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 1561, 19 USPQ2d 1111, 1116 (Fed. Cir. 1991). The examiner bears the initial burden of presenting a prima facie case of unpatentability. In re Alton, 76 F.3d 1168, 1175,

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37 USPQ2d 1578, 1583 (Fed. Cir. 1996). With regard to the written description requirement, the burden is met with evidence or reasons as to why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims. Id. Once the examiner carries the initial burden of making out a prima facie case of unpatentability, the burden shifts to the applicant to overcome the examiner's case. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). To overcome a prima facie case, an applicant must show that the invention as claimed is adequately described to one skilled in the art. In re Alton, 76 F.3d at 1175, 37 USPQ2d at 1583. After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of the evidence with due consideration to persuasiveness of argument. In re Oetiker, 977 F.2d at 1445, 24 USPQ2d at 1444.

The examiner rejected claim 1, because the language "'to render a metal value insoluble' and 'being recovered and render the one or more additional values insoluble' are new matter"

(Answer, Paper No. 19, page 3). The examiner states that

in none of these locations [of the specification cited by the appellants] is there support for the use of the reducing agent "to render a metal value insoluble" nor

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for the use of the sulfuric acid solution to "render the one or more additional metal values insoluble" as is now instantly claimed. The phrase "to render . . . metal value(s) insoluble" is taken to mean to precipitate metal values, and nowhere is there support for this in the sections pointed to in the specification above. Instant pg. 3, lines 29-34 supports precipitating  $UF_4$  but that only occurs when fluoride ion and uranium are present in the process, however the instant claims do not require either" (Answer, Paper No. 19, pages 5 through 6).

We note that the language "to render a metal value insoluble" and "being recovered and render the one or more additional values insoluble" were added by amendment on February 26, 1998 (Paper No. 9, page 1).

In response to the examiner's rejection, the appellants argue that the

language of claim 1, is supported throughout Appellant's [sic, Appellants'] specification, e.g. at page 2, lines 16-28; at page 3, lines 13-28; and in the Examples. Accordingly, the Examiner's final rejection of claims 1-13 as allegedly containing new matter was in error (Brief, Paper No. 16, page 8).

After careful review of the examiner's and the appellants' arguments, we will sustain the examiner's rejection. The language "being recovered and render the one or more additional metal values insoluble" suggests that more than one metal value may be precipitated. However, the specification only discloses the precipitation of one metal, uranium. Thus, the specification

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fails to show that, as of the application filing date, the appellants had possession of the now claimed process of rendering "one or more additional metal values insoluble." For this reason, we will affirm the rejection of independent claim 1 under 35 U.S.C. §112, 1st paragraph, and correspondingly, of dependent claims 2 through 13.

REJECTION OF CLAIMS 1 THROUGH 13  
UNDER 35 U.S.C. §103(a) OVER BENDER IN VIEW OF PAZDEJ

The non-obviousness requirement of 35 U.S.C. § 103(a) provides that

[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

The examiner bears the initial burden of factually supporting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). The teachings of a prior art reference that discloses a range that touches the range recited in the claim renders the claimed invention prima facie obvious. In re Malagari, 499 F.2d 1297, 1303, 182 USPQ 549, 553 (CCPA 1974). Even though an applicant's

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modification results in great improvement over the prior art, it may still not be patentable if the modification was within the capabilities of one skilled in the art. In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). More particularly, where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. Id. However, the applicant can rebut the prima facie case of obviousness by establishing the existence of unexpected properties in the range claimed, or by showing that the prior art, in any material respect, taught away from the claimed invention. In re Geisler, 116 F.3d 1465, 1469, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997). These ranges, which produce new and unexpected results, are termed "critical" ranges, and the applicant has the burden of proving such criticality. In re Aller, et al., 220 F.2d at 456, 105 USPQ at 235. To satisfy this burden, the new and unexpected results must differ in kind, and not merely in degree. Id.

The examiner rejected claims 1 through 13 as being "unpatentable over Bender '490 taken with Pazdej '777" (Answer, Paper No. 19, page 4). The examiner argues that

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Bender teaches the process of solubilizing metals from metal containing material by contacting with sulfuric acid containing a reducing agent and a carbon source (see claims 1, 29, 36 and the examples) (id).

Bender differs in that the sulfuric acid containing hydrofluoric acid is not stated (id).

Pazdej teaches the use of sulfuric acid and hydrofluoric acid to solubilize metals (see the figures and claims) (id at page 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use sulfuric acid containing hydrofluoric acid to dissolve metals in the process of Bender because that is what is taught by Pazdej as desirable (id).

The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results, see In re Aller, 105 USPQ 233 (id).

The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have selected the overlapping portion of the range disclosed by the reference because overlapping ranges have been held to be a prima facie case of obviousness, In re Malagari, 182 USPQ 549 (id).

In response to the examiner's rejection, the appellants begin by arguing that

Bender contains no disclosure relating to a process for recovering metal values which utilizes a reducing agent and a carbon source which differs from the reducing agent. The Examiner noted that the claims of the present invention do not require that the reducing agent and the carbon source be different materials. See Office Action, May 6, 1998, p. 4. However, Appellant has requested that its claims be amended to more specifically claim this aspect of the present

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invention pursuant to 37 C.F.R. 1.116. See Attached Copy of 37 C.F.R. 1.116 Amendment (Brief, Paper No. 16, pages 11 through 12).

Next, the appellants, in essence, argue that even if a reductant (e.g. carbonaceous material) can also be a carbon source, "Bender does not teach or disclose the use of more than one reductant source at any point in the specification, including the examples (id, page 16). The appellants state that

the term "mixtures thereof" as used in claim 36 likely refers to a raw mineral, such as an ore, a mining waste, or a milling waste, that contains both sulfide materials and carbonaceous materials (Brief, Paper No. 16, page 12).

Third, the appellants attempt to distinguish their carbon source from the one in Bender by arguing that

[t]he present invention also differs from Bender in its use of carbon. Carbonaceous materials are used as a reductant in Bender when the ore containing precious metals is an  $\text{MnO}_2$  ore. See Bender, 5:28-31. In contrast, the carbon source in the present invention is used as a catalyst in the reduction of uranium initiated by a separate reductant, such as iron. . . . Since different materials are being reduced, uranium in the present invention and manganese in Bender, the role of carbon in the respective processes is also different (Brief, Paper No. 16, page 12).

Fourth, the appellants attempt to distinguish from Bender the operation of their reducing agent. The appellants argue

[t]he present invention also differs from Bender in relation to the operation of the reducing agent. The reducing agent in the present invention renders a metal

value insoluble. See Claim 1. . . . Conversely, the reducing agent in Bender reduces manganese from  $Mn^{4+}$  to  $Mn^{2+}$  enabling it to form  $MnCl_2$  or  $MnSO_4$ , depending on the solution, which is soluble in the leach. See Bender, 5:60-64 (Brief, Paper No. 16, page 13).

Fifth, the appellants argue that neither Bender nor Pazdej teaches the desirability of using a sulfuric acid solution containing hydrofluoric acid. The appellants state that

Bender does not teach or suggest the use of a sulfuric acid solution containing hydrofluoric acid. . . . However, the Examiner cited Pazdej as teaching the use of sulfuric acid and hydrofluoric acid to solubilize metals. . . .

[T]he claims of Pazdej never even mention hydrofluoric acid. . . .

The only disclosure in Pazdej that suggests the use of sulfuric acid and hydrofluoric acid is found in the figures. See Pazdej, Figures 1-2. . . . [T]he Pazdej specification does not indicate the function of the hydrofluoric acid stream.

The disclosure of Pazdej would not suggest to a person of ordinary skill in the art that hydrofluoric acid may be added to a sulfuric acid solution to place fluoride ions into solution in order to precipitate undesirable metal values (Brief, Paper No. 16, pages 13 through 14).

After careful review of the examiner's and the appellants' arguments, we will sustain the examiner's rejection. Regarding the appellants' first argument, a plain reading of claim 1 does not require that the reducing agent and the carbon source be different materials. Thus, the carbonaceous material in Bender can be both a reductant and a carbon source within the meaning of



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appellants' claim 1. Also, claim 36 of Bender teaches the use of a mixture of reductants, which includes sulfide materials and carbonaceous materials (Bender, column 55, lines 8 through 10). Examples of carbonaceous materials include coal (id., column 9, line 7). Accordingly, the sulfide material meets the reducing agent limitation of claim 1, while the carbonaceous material meets the carbon source limitation of that claim.

Regarding the appellants' second argument, the appellants' position that the mixture of sulfide and carbonaceous materials appear to come from a single source, rather than more than one source, and thus, cannot be a reducing agent and carbon source within the meaning of claim 1, is not well taken. It is a general proposition that, during examination, claims are given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). There is no claim limitation that the reducing agent and the carbon source originate from different sources. Nor does the specification constrain us to adopt the narrower interpretation urged by the appellants. Claim 1 only requires the presence of a reducing agent and a carbon source (Brief, Paper No. 16, Appendix, claim 1). Therefore, we are not persuaded by the appellants' second argument.

Regarding the appellants' third argument, claim 1 does not limit the use of carbon as a catalyst. It merely requires its presence (id). The discussion pertaining to "broadest reasonable interpretation" in the previous paragraph applies equally here. Therefore, we are not persuaded by the appellants' argued distinction in the role of their carbon source.

Regarding the appellants' fourth argument, claim 1 requires "a reducing agent to render a metal value insoluble" (Brief, Paper No. 16, Appendix, claim 1). The appellants' specification teaches that the reducing agent (iron) does not directly make a metal value (uranium) insoluble as the claim language suggests. Rather, the presence of the reducing agent (iron) plays an indirect role in the precipitation of uranium. The uranium is reduced from  $U^{6+}$  to  $U^{4+}$  in the presence of iron so that it can react with fluoride ions to form  $UF_4$ , which is insoluble (Specification, page 3, lines 29 through 36, page 4, lines 1 through 2).

Bender teaches the precipitation of metals, including iron, manganese, zinc, and lead (Bender, column 13, line 49, column 17,

lines 23 through 24, column 19, lines 30 through 45).<sup>3</sup> While the precipitation of such metals occurs downstream, we note that Bender's process is continuous (id, column 19, line 5). Thus, reducing agents from the leaching zone would be present during the precipitation of the above mentioned metals. Additionally, Bender teaches that lead can be precipitated in the presence of a sulfidizing reagent (id, column 19, lines 40 through 42). Furthermore, Bender discloses that a sulfidic material may be a reductant (id, column 8, lines 42 through 43). Therefore, we are of the opinion that Bender satisfies the claim 1 requirement of "a reducing agent to render a metal value insoluble," because Bender discloses the use of a reducing agent wherein, ultimately, a metal is being precipitated.

For example, the manganese in Bender is initially reduced from  $Mn^{4+}$  to  $Mn^{2+}$  by a reducing agent, enabling it to form a soluble compound (Bender, column 5, lines 60 through 62). Subsequently, the manganese is precipitated with lime (id, column 15, lines 23 through 25). As addressed two paragraphs prior, a reducing agent need only have an indirect involvement with the

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<sup>3</sup>Iron can be precipitated in the presence of a monovalent cation, such as  $H^+$ ,  $Na^+$ ,  $K^+$ , or  $NH_4^+$  (id, column 13, lines 49 through 52). Manganese and zinc can be precipitated with lime (id, column 17, lines 23 through 25, column 19, lines 30 through 39). Lead can be precipitated in the presence of a sulfidizing reagent (id, column 19, lines 40 through 42).

precipitation of a metal to satisfy the claim 1 language of "a reducing agent to render a metal value insoluble." The reducing agent in Bender plays such an indirect role by initially reducing the manganese, enabling it to form a soluble compound, and then allowing it to be indirectly rendered insoluble with lime. Analogously, the appellants' reducing agent reduces uranium, allowing it to be indirectly rendered insoluble with fluoride ions (Specification, page 3, lines 29 through 36, page 4, lines 1 through 2).

Regarding the appellant's fifth argument, the figures of Pazdej show the use of sulfuric and hydrofluoric acid in its leaching process (Pazdej, Figures 1 and 2). The appellants' position that the disclosure of Pazdej would not suggest to one of ordinary skill in the chemical arts to use fluoride ions from hydrofluoric acid to precipitate metal-fluoride compounds is not well-taken. But more importantly, the hydrofluoric acid limitation is found in claim 2, but not claim 1 (Brief, Paper No. 16, Appendix, claim 1 and 2). As stated in the Grouping of Claims section, our discussion addressing the rejection under 35 U.S.C. § 103(a) will be limited to independent claim 1. Therefore, the obviousness of using hydrofluoric acid to

precipitate undesirable metal values has no bearing on our discussion of this rejection.

In sum, Bender discloses a process of solubilizing metals from a metal containing material by contacting it with sulfuric acid, a reducing agent, and a carbon source (Bender, column 4, lines 57 through 63, column 8, lines 42 through 44, column 9, lines 5 through 7). Bender also discloses heating the mixture to temperatures ranging from 85 to 91°C, with specific examples at 85, 89, 90 and 91°C (Bender, column 34, lines 34 through 41, column 35, lines 52 through 60, column 42, lines 33 through 41, column 43, lines 25 through 33). The court in In re Wertheim teaches that "the disclosure in the prior art of any value within a claimed range is an anticipation of the claimed range." 541 F.2d 257, 267, 191 USPQ 90, 100 (CCPA 1976). Bender clearly discloses four values within the appellants' claimed range of 75-95°C. Furthermore, Bender discloses the separation of the resulting solution from the remaining solids (Bender, Figures 1 through 10).

Although claim 1 stands rejected under 35 U.S.C. § 103(a) over Bender in view of Pazdej, it appears that Bender, alone, discloses every limitation of claim 1. The court in In re Fracalossi has stated that a claimed invention "cannot have been

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anticipated and not have been obvious. [E]vidence establishing lack of all novelty in the claimed invention necessarily evidences obviousness." 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982). Therefore, we will sustain the examiner's rejection of independent claim 1 under 35 U.S.C. § 103(a) over Bender in view of Pazdej, and correspondingly, of dependent claims 2 through 13.

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## SUMMARY

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

BRADLEY R. GARRIS  
Administrative Patent Judge

  
CATHERINE TIMM  
Administrative Patent Judge

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